IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/12/2002

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.19522 OF 2000
AND
W.M.P.NO.28321 OF 2000 & 4103 OF 2001

M/s. Penguin Textiles Ltd.,
rep. by its Executive Director
Mr.N.R. Chettiar .. Petitioner

-Vs-

1. The Appellate Authority for
Industrial and Financial
Reconstruction,
Jeevan Prakash Building, 10th floor,
25, Kasturiba Gandhi Marg,
New Delhi 110 001.

2. Board of Industrial and Financial
Re-construction,
Jawahar Vyapar Bhavan,
No.1, Tolstoy Marg,
New Delhi 110 001.

3. Indian Bank, rep. by its
Chairman and Managing Director,
Post Box No.1384,
31, Rajaji Salai, Chennai 600 001.

4. Penguin Textile Workers Union,
Uppal Mandal, Ranga Reddy District,
Hyderabad 500 039.

5. Sri Ghanshyam Sharda

6. Shri V.U. Eradi,
representing Cotton Supplies of
of PTL,B-34, Connaught Place,
New Delhi 110 001. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.R. Gandhi,
Senior Counsel for
Mr.R.G. Narendhiran

For Respondent -3 : Mr. Jayesh B. Dolia
for Indian Bank

:J U D G M E N T

The present writ petition has been filed to quash the order dated 29 .8.2000 passed by the Board of Industrial and Financial Reconstruction (hereinafter referred to as 'BIFR') which has been confirmed in appeal by the Appellate Authority for Industrial and Financial Reconstruction (hereinafter

referred to as 'AAIFR') and for a further direction to the third respondent, Indian Bank, to consider and implement the draft rehabilitation scheme prepared by the petitioner.

2. Petitioner is a company incorporated in 1962 under the Companies Act, 1956. It has got textile mill manufacturing cotton yarn at Tarnaka Upal Road, Hyderabad. The petitioner company was declared as a sick industry within the meaning of Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "the Act"). Indian Bank, the third respondent was appointed as Operating Agency to work for the revival of the petitioner company. Proposals were being submitted from time to time and ultimately some revival scheme was submitted by the petitioner in July, 1999 and draft rehabilitation scheme was prepared by the bank. However, under the impugned order dated 29.8.2000, BIFR rejected the scheme given by the bank and ordered for publication for the change of management. Such order was challenged before AAIFR and the order has been confirmed on 3.11.2000.

3. Though several contentions and counter contentions have been raised by the learned counsels appearing for the parties, it is unnecessary to deal with all those contentions as in my opinion, the matter is required to be reconsidered by AAIFR in view of certain subsequent developments.

4. It has been brought to my notice that a dispute was pending between the petitioner and the Andhra Pradesh Industrial Infrastructure Corporation relating to land whereon the industry has been established. Ultimately on 23.9.2002, the matter had been disposed of by the Division Bench of Andhra Pradesh High Court in W.A.No.252 of 2000. It has been submitted by the learned counsel for the petitioner that in view of the fact that 20.19 acres of land is made available to the petitioner, it would be in a position to garner financial resources to meet the financial obligations and dues and, therefore, there is longer necessity for change of management.

5. Learned counsel appearing for the Indian Bank has submitted that the aforesaid order, which was passed on the basis of settlement between the present petitioner and A.P. Industrial Infrastructure Corporation, may not be

binding on the Bank which was not a party to the compromise.

6. The fact that 20.19 acres of land would be made available to the petitioner cannot be considered as irrelevant. It is of course true that ordinarily a writ of certiorari is to be disposed of on the materials available on record at the time of passing of the impugned order and not on the basis of subsequent factual developments. However, one cannot lose sight of the fact that the avowed purpose under the Act and BIFR Regulations is rehabilitation of the sick industry and not its annihilation and the primary duty of the BIFR is to find ways and means to revive a particular sick industry. Since the subsequent development is relevant, it is appropriate that the matter should be reconsidered by AAIFR keeping in view the impact of the order passed by the Division Bench of Andhra Pradesh High C ourt in W.A.No.252 of 2 000.

7. For the aforesaid reasons, the order passed by the first respondent, AAIFR is quashed and the matter is remanded to AAIFR for reconsideration in accordance with law taking into account all relevant circumstances including the order passed by the Division Bench of Andhra Pradesh High Court in W.A.No.252 of 2000 dated 23.9.2002. The writ petition is accordingly disposed of subject to the aforesaid observation. No costs. Consequently, W.M.P.NOs.28321 of 2000 and 4103 of 2001 is closed.

Index : Yes
Internet : Yes
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To

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